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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MICHAEL L. SMITH,

12 Plaintiff,

13 vs.

14 JORDAN RAMIS, PC, and DOUGLAS P.
15 CUSHING,

16 Defendants.

CASE NO. 12CV2025 W (WMC)

ORDER TAXING COSTS

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18 Upon application of JORDAN RAMIS, PC, and DOUGLAS P. CUSHING, a hearing for
19 taxation of costs was held on APRIL 2, 2014. DEBORAH A. WOLFE, representing plaintiff, and
20 CATHLEEN GILLILAND FITCH, representing defendants, appeared telephonically. Defendant's Bill
21 of Costs [43], Plaintiff's objection to Bill of Costs [48], and Defendant's reply to objection to Bill of
22 Costs [49] have been reviewed. Defendants request for costs in the amount of \$20,591.86 is reduced
23 to \$11,735.66 as follows:

- 24 1. Defendants request for costs itemized to fees of the clerk in the amount of \$350.00
25 is **taxable**.
26 2. Defendants request for costs itemized to fees for service of summons and subpoenas in
27 the amount of \$291.35 is **taxable**.
28 3. Defendants request for costs itemized to fees of the court reporter in the amount of
\$11,849.67 is **reduced to \$7,324.67**. Pursuant to Civ. LR 54.1(b)(3)(b), when both

video and stenographic depositions are taken, both will be allowed as costs ONLY when the video deposition is used in trial. Therefore, all costs associated with the production of video transcripts for *Michael L. Smith, Douglas P. Cushing, Eugene G. Bruno, and Christopher Wixom* are not taxable.

4. Defendants request for costs itemized to fees for witnesses in the amount of \$3,080.00 is **reduced to \$120.00**. Pursuant to 28 U.S.C. § 1920(3), witness fees are recoverable as costs and awarded when appropriate in accordance with 28 U.S.C. § 1821 at the current prevailing rate of \$40 per day. Additionally, unless otherwise provided by law, fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses¹. Therefore, Defendants request for witness fees in the amount of \$3,000.00 for *Gordon Cruse's* deposition is reduced to \$40.00.

5. Defendants request for costs itemized to fees for exemplification and copies in the amount of \$5,020.84 is **reduced to \$3,649.64**. Civil Local Rule 54.1(b)(6)(a) allows for taxation of “[t]he cost of copies necessarily obtained for use in the case . . . if one or more of the following criteria are met: [¶] (1) copies are provided either to the court or to opposing counsel either by court order, rule or statute. [¶] (2) copies were used as court exhibits, either admitted into evidence, or attached to a motion.” The rules expressly prohibit taxation of “[t]he cost of reproducing copies of motion, pleadings, notices and other routine case papers,” and “[t]he cost of copies obtained for counsel’s own use.” *Id.* Rule 54.1(b)(6)(b). The burden of showing that the costs of copies meets the above criteria is on the requesting party.²

Defendants’ Bill of Costs and subsequent reply failed to meet this burden as to the following four entries:

Internal charge - copies for deposition: \$414.20

¹Civ. LR 54.1(b)(4)(d)

²The party seeking recovery must present documentary evidence in the form of affidavits describing the documents copied, to whom they were provided, the number of pages copied, and the cost per page, and the use of or intended purpose for the items copied. If documents were provided only to the party seeking recovery, that party must specify the purpose of acquisition and photocopying of the documents served. In the absence of a specific showing, recovery must be denied. *Id.* Rule 54.1(b)(6)(c) (emphasis added.)

Internal charge - copies for deposition exhibits: \$468.40

Internal charge - copies for MSJ: \$333.60

Internal charge - copies for MSJ reply: \$155.00

TOTAL: \$1,371.20

Accordingly, these entries are denied and shall be deducted from the total taxable amount for copies. Therefore, Defendants request for fees for exemplification and copies in the amount of \$5,020.84 is **reduced to \$3,649.64.**

Costs are taxed as follows:

<i>Description</i>	<i>Amount(s) Requested</i>	<i>Amount(s) Taxed</i>
<u>Fees of the clerk</u>	\$350.00	\$350.00
<u>Fees for service of summons and subpoenas</u>	\$291.35	\$291.35
<u>Fees of the court reporter</u>	\$11,849.67	\$7,324.67
<i>Requested \$11,849.67</i> - \$ 1,525.00 (Smith video) - \$ 575.00 (Cushing video) - \$ 1,280.00 (Bruno video) - \$ 1,145.00 (Wixom video) <i>Total \$ 7,324.67</i>		
<u>Fees for witnesses</u>	\$3,080.00	\$120.00
<i>Requested \$ 3,080.00</i> <i><u>Taxable</u></i> \$ 40.00 (Wixom) + \$ 40.00 (Cruse - Reduced from \$3,000) + \$ 40.00 (Sweeney) <i>Total \$ 120.00</i>		

<u>Fees for exemplification and copies</u>	\$5,020.84	\$3,649.64
Requested \$5,020.84 - \$ 414.20 (Internal fee - Copies for deposition) - \$ 468.40 (Internal fee - Copies for deposition exhibits) - \$ 333.60 (Internal fee - Copies for MSJ) - \$ 155.00 (Internal fee - Copies for MSJ reply) ³		
Total \$ 3,649.64		
TOTAL COSTS TAXED in favor of JORDAN RAMIS, PC, and DOUGLAS P. CUSHING	\$20,591.86	\$11,735.66

Counsel's attention is called to Local Rule 54.1.h which provides in part that a motion to re-tax by any party, in accordance with Rule 54(d), FRCivP and Local Rule 7.1, shall be served and filed within seven (7) days after receipt of the Order Taxing Costs, or unless within the seven (7) day period the court permits the motion to be made orally.

Dated: April 9, 2014

JOHN MORILL, Acting Clerk of Court

/s/ Laura Barkins

LAURA BARKINS, Assistant Supervisor

cc: All Parties

³Bill of Costs itemization sheet indicates defendant is seeking \$185.00 for "Internal charges - copies for MSJ". However, Defendant's reply indicates \$185.00 was a typographical error and should reflect \$155.00 as the cost sought by Defendant.